

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

JOE COMES and RILEY PAINT, INC.,
an Iowa Corporation,

Plaintiffs,

v.

MICRSOFT CORPORATION, a
Washington Corporation,

Defendant.

No. CL82311

MOTION TO AMEND PETITION

FILED
POLK COUNTY, IA.
05 SEP 16 PM 1:54
IOWA DISTRICT COURT

COME NOW Plaintiffs in the above captioned case and move the Court pursuant to Iowa Rule of Civil Procedure 1.402 to amend Plaintiffs' Third Amended Petition and as grounds therefore state:

1. This motion and the proposed Fourth Amended Petition are timely, as they are being filed on September 16, 2005, the deadline set for such motions by this Court's Amended and Substituted Pre-Trial Scheduling Order of July 7, 2005 (Scheduling Order).

2. Iowa Rule of Civil Procedure 1.402(4), formerly Rule 69(d), provides in pertinent part that leave to amend, including leave to amend to conform to the proof, shall be freely given when justice so requires.

3. Rule 1.402(4) has been construed to permit liberal amendment of the pleadings. *See Rife v. D.T. Corner, Inc.*, 641 N.W.2d 761, 767 (Iowa 2002).

4. The proposed Fourth Amended Petition clarifies Plaintiffs' claims for damages and adds factual allegations that are primarily based upon the lawsuits and proceedings that were referred to in Plaintiffs' Motion to Compel Discovery dated July 22, 2005 (i.e. *Be Inc. v. Microsoft Corp.*,



Burst.com Inc. v. Microsoft Corp., Microsoft v. Lindows.com, Netscape v. Microsoft Corp., RealNetworks, Inc. v. Microsoft Corp., Sun Microsystems, Inc. v. Microsoft Corp. and the proceeding before the Commission of the European Communities involving Microsoft). These factual allegations simply add support for the claims in Plaintiffs' previous petitions that Microsoft engaged in—and continues to engage in—unlawful monopolization and unreasonable restraints of trade in violation of the Iowa Competition Law, Iowa Code § 553.1 *et seq.*

5. The allegations are not new or surprising to Defendant as they were asserted in these other lawsuits and proceedings in which Defendant was a party and Plaintiffs have sought discovery concerning these matters in this case.

6. The proposed Fourth Amended Petition also adds plaintiffs, as specifically contemplated by this Court's Scheduling Order which set September 16, 2005 as the deadline to add parties.

DATED: September 16, 2005

Respectfully submitted,

ROXANNE CONLIN & ASSOCIATES, P.C.

By *Roxanne Barton Conlin*
Roxanne Barton Conlin

ROXANNE CONLIN & ASSOCIATES, P.C.
600 Griffin Building
319 Seventh Street
Des Moines, Iowa 50309
Phone: (515) 283-1111
Fax: (515) 282-0477

Richard M. Hagstrom
ZELLE, HOFMANN, VOELBEL, MASON
& GETTE LLP
500 Washington Avenue South
Suite 4000
Minneapolis, Minnesota 55415
Phone: (612) 339-2020
Fax: (612) 336-9100

Attorneys for Plaintiffs

Copy to:

Edward Remsburg
Ahlers & Cooney, P.C.
100 Court Avenue
Suite 600
Des Moines, IA 50309

Brent B. Green
Bradley C. Obermeier
Duncan, Green, Brown & Langeness
400 Locust Street, Suite 380
Des Moines, IA 50309

David B. Tulchin
Joseph E. Neuhaus
Sullivan & Cromwell
125 Broad Street
New York, New York 10004

Attorneys for Defendant

CERTIFICATE OF SERVICE
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on 9-16 2005
By: ☐ U.S. Mail ☐ FAX
☐ Hand Delivered ☐ Overnight Courier
☐ Certified Mail ☒ Other: email
Signature *Roxanne Barton Conlin*

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

| | | |
|-----------------------------------|---|----------------------------------|
| JOE COMES, and RILEY PAINT, INC., | : | No. CL82311 |
| an Iowa Corporation, | : | |
| | : | |
| Plaintiffs, | : | |
| | : | [PROPOSED] ORDER GRANTING |
| v. | : | MOTION TO AMEND |
| | : | |
| MICRSOFT CORPORATION, a | : | |
| Washington Corporation, | : | |
| | : | |
| Defendant. | : | |

NOW, THEREFORE, the Court being fully advised in the premises hereby grants the Plaintiffs' Motion to Amend their Third Amended Petition.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiffs' Fourth Amended Petition is deemed served upon Defendant and accepted for filing as of the date of this Order.

IT IS SO ORDERED this ____ day of _____, 2005.

SCOTT D. ROSENBERG, JUDGE
Fifth Judicial District, Iowa

Copies to:

Roxanne Barton Conlin
Roxanne Conlin & Associates, P.C.
600 Griffin Building
319 Seventh Street
Des Moines, Iowa 50309
Phone: (515) 282-3329
Fax: (515) 282-0318

Richard M. Hagstrom
Zelle, Hofmann, Voelbel, Mason & Gette LLP
500 Washington Avenue South
Suite 4000
Minneapolis, Minnesota 55415
Phone: (612) 339-2020
Fax: (612) 336-9100

ATTORNEYS FOR PLAINTIFFS

Edward Remsburg
Ahlers & Cooney, P.C.
100 Court Avenue
Suite 600
Des Moines, IA 50309

Brent B. Green
Bradley C. Obermeier
Duncan, Green, Brown & Langeness
400 Locust Street, Suite 380
Des Moines, IA 50309

David B. Tulchin
Joseph E. Neuhaus
Sullivan & Cromwell
125 Broad Street
New York, New York 10004

ATTORNEYS FOR DEFENDANT

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

JOE COMES, and RILEY PAINT, INC.,
an Iowa Corporation,

Plaintiffs,

v.

MICRSOFT CORPORATION, a
Washington Corporation,

Defendant.

No. CL82311

**[PROPOSED] ORDER GRANTING
MOTION TO AMEND**

NOW, THEREFORE, the Court being fully advised in the premises hereby grants the
Plaintiffs' Motion to Amend their Third Amended Petition.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiffs' Fourth
Amended Petition is deemed served upon Defendant and accepted for filing as of the date of this
Order.

IT IS SO ORDERED this ____ day of _____, 2005.

SCOTT D. ROSENBERG, JUDGE
Fifth Judicial District, Iowa

Copies to:

Roxanne Barton Conlin
Roxanne Conlin & Associates, P.C.
600 Griffin Building
319 Seventh Street
Des Moines, Iowa 50309
Phone: (515) 282-3329
Fax: (515) 282-0318

Richard M. Hagstrom
Zelle, Hofmann, Voelbel, Mason & Gette LLP
500 Washington Avenue South
Suite 4000
Minneapolis, Minnesota 55415
Phone: (612) 339-2020
Fax: (612) 336-9100

ATTORNEYS FOR PLAINTIFFS

Edward Remsburg
Ahlers & Cooney, P.C.
100 Court Avenue
Suite 600
Des Moines, IA 50309

Brent B. Green
Bradley C. Obermeier
Duncan, Green, Brown & Langeness
400 Locust Street, Suite 380
Des Moines, IA 50309

David B. Tulchin
Joseph E. Neuhaus
Sullivan & Cromwell
125 Broad Street
New York, New York 10004

ATTORNEYS FOR DEFENDANT